

REMARKS

The Final Office Action dated August 5, 2005 contained a final rejection of claims 1-3, 5-7, 13, 16, 18-22, 24-28, and 30-33. The Applicant has amended claims 1, 5, and 13. Claims 1-3, 5-7, 13, 16, 18-22, 24-28, and 30-33 are in the case. Please consider the present amendment with the attached Request for Continued Examination (RCE) under 37 C.F.R. § 1.114. This amendment is in accordance with 37 C.F.R. § 1.114. Reexamination and reconsideration of the application, as amended, are requested.

The Office Action rejected claims 1-3, 5-7, 13, 16, 18-22, 24-28, and 30-33 under 35 U.S.C. § 103(a) as being unpatentable over Scott (U.S. Patent No. 6,816,464). The Applicant respectfully traverses this rejection based on the amendments to the claims and the arguments below.

The Applicant's amended claims 1 and 5 now include in part "...using the data transfer metrics with at least one of the user-specified data transfer rules to control and identify an optimal data transfer pathway between the first and second processing applications..." Also, claim 13 includes a data transfer manager that "...uses the data transfer metrics with at least one of the user-specified data transfer rules to control and identify an optimal data transfer pathway between the first and second processing applications..." By employing a data transfer manager, which can be implemented as a computer program to track and record data transfer metrics and apply those metrics using user-defined rules, data transfers between different processes in a single computer can be optimized. Similarly, data transfers between separate computers can also be optimized if the various data pathways existing between the computers are evaluated using objective transfer metrics. The data transfer metrics in combination with user-specified data transfer rules or objectives can be used to objectively control and identify the optimal data transfer pathway between the separate computers.

In contrast, Scott does not disclose, teach, or suggest the Applicant's finding the optimal path from one end user or application to another end user or application. Instead, Scott merely disclose "...testing of routes among various gateways..." which includes "...routing managers for checking and storing route information..." (see

Abstract of Scott). In other words, the optimal routes disclosed in Scott are within the network which is common to all the gateway devices (see element 202 of Fig. 2 in Scott). Finding the optimal path within the network on the other side of each gateway device (described as the local exchanges 210 and 214 in Fig. 2) is not addressed by Scott. As such, Scott does not determine a direct point to point or an optimal route between a first and second application within the same local exchange. For instance, application (telephone) 216 and application (telephone) 218 of Scott, which represent the end users, or end points of the system, are funneled through gateways 204 and 206 and network 202, and an optimal data transfer pathway between the first and second processing applications is not determined, like the Applicant's claimed invention.

Further, even though the reference does not disclose, teach or suggest all of the Applicant's claimed features, it should not even be considered. This is because Scott teaches away from the Applicant's claimed invention. Namely, Scott explicitly states on col. 2 lines 28-39 that the system uses "...a routing manager or a route management module implemented **at a gateway** for determining which other **gateways** are available to it. A **gateway** can be any server enabled for routing voice data packets. The method involves the **gateway** determining the candidate routes to the other **gateways**, testing those candidate routes, determining candidate route statistics, scoring each candidate route tested, prioritizing each scored route and storing this priority and score information. In one embodiment, a routing manager **on a gateway** tests the routes to other **gateways** so that it can use the proper routes based on the preferences of users. [*emphasis added*]).

This is the opposite of the Applicant's claimed invention which uses the data transfer metrics with at least one of the user-specified data transfer rules to control and identify an optimal data transfer pathway between the first and second processing applications. Since Scott requires use of the gateway, it clearly teaches away from the Applicant's claimed invention because non-use of a gateway, like the Applicant's claimed invention, would render Scott inoperable. This teaching away of the Applicant's invention and the failure of the cited reference to disclose, suggest or provide motivation for the Applicant's claimed invention indicates a lack of a prima facie case of

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obviousness. Thus, the reference cannot render the claims obvious. Consequently, the Applicant respectfully submits that the rejections under 35 U.S.C. 103 should be withdrawn. (MPEP 2143).

With regard to the rejection of the dependent claims, because they depend from the above-argued respective independent claims, and they contain additional limitations that are patentably distinguishable over the cited references, these claims are also considered to be patentable (MPEP § 2143.03).

Thus, it is respectfully requested that all of the claims be allowed based on the amendments and arguments. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. Additionally, in an effort to further the prosecution of the subject application, the Applicants kindly request the Examiner to telephone the Applicants' attorney at (818) 885-1575. Please note that all mail correspondence should continue to be directed to

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